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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3170 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NATVARLAL KARSANJI GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR MITUL K SHELAT for Petitioner
Ms.Nandini Joshi, ASSTT.GOVERNMENT PLEADER for
Respondent No. 1
MR VC DESAI for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 28/07/2000

ORAL JUDGEMENT :

The present petition is filed by the petitioner
being aggrieved of the order passed by the Additional
Chief Secretary (Appeals), Revenue Department in Revision
Application No.SRD/ VLS/ cTS/ 32/ 89 dated 9.3.90/

1.6.90, whereby the Secretary (Appeals) allowed the Revision Application and quashed the order of the Collector dated 10.5.1989 and also quashed the order of the City Survey Inquiry Officer and declared the land in question to be that of the Govt. land.

2. It is given out that the petitioner who is the resident of Khergam, Taluka Chikli, District Valsad has purchased the land belonging to one Dahyabhai Makanji for a sum of Rs.1500/- by a registered sale deed dated 3.3.1966. It is the case of the petitioner that the City Survey Inquiry Officer, who conducted the inquiry showed that the petitioner is the owner of only 8.56 sq. meters and amalgamated 32.31 sq. meters of land in favour of respondent no.2 herein. Being aggrieved of that the petitioner filed an appeal before the Deputy Collector. Said appeal came to be allowed by the Assistant Collector, Navsari by his judgement and order dated 31.5.1988 and directed a fresh inquiry to be conducted by the City Survey Officer. Being aggrieved of the said judgement and order in appeal, respondent no.2 preferred a revision application before the Collector which came to be rejected by the Collector, Valsad by his order dated 10.5.1989, who confirmed the order of the Assistant Collector. Being aggrieved of the said order of the Collector, respondent no.2 preferred revision application before the Secretary (Appeals). Said revision application came to be allowed by the Secretary (Appeals) as mentioned hereinabove. Being aggrieved of that the present petition is filed.

3. It is vehemently submitted by Mr.Shelat, learned counsel that the Secretary (Appeals) could not have decided to the effect that the land belongs to the Govt. when there was no case of either party to that effect. It was also submitted by Mr.Shelat on behalf of the petitioner that the proceedings started from an order of the City Survey Inquiry Officer, who held a portion of the land to be that of the ownership of respondent no.2 and in those proceedings, when it was not the case of any of the parties that the land belongs to the Govt., there was no question for the Secretary (Appeals) to hold to that effect. He submitted that the order of the Secretary (Appeals) suffers from non application of mind and also the same is dehors the record produced before him and the same is required to be quashed and set aside.

4. Mr.Desai, learned counsel for respondent no.2 pointed out that it is observed by the Secretary (Appeals) at one stage that the City Survey Inquiry Officer has held the land to be that of the Government.

That observation is not supported by the record of the case inasmuch as the order of the Deputy Collector, which is made available for perusal by the learned Asstt. Govt. Pleader. Ms.Nandini Joshi also reveals that the Deputy Collector had in terms recorded that the dispute between the parties is regarding the ownership of the land and also about the measurement of the said land. In light of this it is clear seems that the Secretary (Appeals) has not applied his mind while considering the rival contentions of both the parties.

5. In view of that this Special Civil Application is allowed. The judgement and order of the Secretary (Appeals) in Revision Application No.SRD/ VLS/ CTS/ 32/ 89 dated 9.3.90/ 1.6.90 is hereby quashed and set aside and the order of the Assistant Collector, which was confirmed by the Collector, Valsad is restored, whereby the matter stood remanded to the City Survey Inquiry Officer. He shall, in turn, hold an inquiry after giving reasonable opportunity to both the sides to present their case. Rule is made absolute accordingly with no order as to costs.

6. It may also be noted that though this Court while admitting this matter on 1.5.1991 has specifically mentioned that,

"By way of ad interim relief it is ordered that the operation of the order, Annexure 'C' is stayed. It would be open to the authorities below to proceed further as per the direction given in the order, Annexure 'B'."

But the authorities have not taken care to comply with the order. Had the authorities complied with the order, the petition would have become infructuous much earlier. A copy of this order may be sent to the Secretary, Legal Department for necessary action.

28th July 2000 (Ravi R. Tripathi, J.)

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